

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LUCAS RODRIQUEZ,

Petitioner,

-v.-

9:07-CV-0217
(LEK)(GHL)

JOHN W. BURGE,

Respondent.

APPEARANCES:

LUCAS RODRIQUEZ
Petitioner, *pro se*
01-B-2538

GEORGE H. LOWE, U.S. MAGISTRATE JUDGE

ORDER

Petitioner Lucas Rodriquez filed a *pro se* Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on February 27, 2007. Dkt. No. 1. The Petition was ordered served on March 22, 2007. Dkt. No. 6. Prior to the Respondent filing a response to the Petition, Rodriquez filed a Motion to Stay this action. Dkt. No. 14. Petitioner seeks time to return to the state courts to exhaust additional claims. *Id.* On September 28, 2007 Respondent filed a response indicating he would consent to the stay, but asked that it be structured in accordance with *Zarvela v. Artuz*, 254 F.3d 371 (2d Cir. 2001), *cert. denied*, 534, U.S. 1015, 122 S.Ct. 506 (2001) Dkt. No. 15.

As the Second Circuit recognized in *Zarvela*, any stay must be “appropriately conditioned,” so that a petitioner is not permitted “to take an undue amount of time to pursue state court remedies.” *Supra.* at 378. Accordingly, in light of *Zarvela*, and in the interest of preserving the viability of Petitioner’s claims, the Court grants Petitioner’s Motion subject to the limitations set forth herein. Further proceedings in this matter are hereby stayed in order that

Petitioner may pursue his claims in state court and, if necessary, return to this Court after exhaustion is completed.

WHEREFORE, it is hereby

ORDERED, that Petitioner's Motion to Stay (Dkt. No. 14) is granted. All further proceedings in this matter are hereby **stayed**, on the following terms and conditions: **Within thirty (30) days** from the date of the resolution of Petitioner's state court proceedings, Petitioner must advise the Court, in writing, of the outcome thereof and must also provide a copy of the state court decision(s) concerning the disposition of the newly exhausted claims, and it is further


ORDERED, that Petitioner advise the Court, in writing, **within sixty (60) days** from the filing date of this Order, and, if a decision has not yet been reached in state court, **every subsequent sixty (60) days thereafter**, of the status of his state court proceeding(s), and it is further

ORDERED, that if Petitioner fails to comply with the terms of this Order, the stay shall be lifted and the file in this matter returned to the Court for further consideration, and it is further

ORDERED, that the Clerk serve a copy of this Order on parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: November 16, 2007
Syracuse, New York


George H. Lowe
United States Magistrate Judge